

**DRAFT REFERENCE
PUBLIC SERVICES AGREEMENT
BETWEEN
THE INTERNATIONAL MOBILE SATELLITE ORGANIZATION
AND
(THE COMPANY)**

**AS AMENDED BY THE ELEVENTH SESSION OF THE
IMSO ADVISORY COMMITTEE**

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**PUBLIC SERVICES AGREEMENT
BETWEEN
THE INTERNATIONAL MOBILE SATELLITE ORGANIZATION
AND
(THE COMPANY)**

PUBLIC SERVICES AGREEMENT made on _____ day of _____ 20__
between:

- (1) **THE INTERNATIONAL MOBILE SATELLITE ORGANIZATION** (“the Organization”), an intergovernmental organization established under the Convention on the International Mobile Satellite Organization which entered into force on 16 July 1979, as amended, with its headquarters at 99 City Road, London, EC1Y 1AX;
- (2) [.....], (“the Company”), a company incorporated under the law of [....], with its registered office at [....],

WHEREAS:

- (A) Maritime mobile satellite systems recognised for use in the GMDSS are based on:
 - 1. the Convention on the International Mobile Satellite Organization (IMSO) 1979, as amended from time to time;
 - 2. the International Convention for the Safety of Life at Sea, 1974 (SOLAS), as amended from time to time;
 - 3. IMO Assembly Resolution A.888(21), as amended from time to time; and
 - [4. IMO MSC Resolution 1077, as amended from time to time; *]
- (B) The Company has been recognised by the International Maritime Organization (IMO) to participate in the GMDSS;
- (C) It is a condition of IMO recognition that GMDSS services provided by the Company are overseen by the Organization,

THIS AGREEMENT sets out the obligations of the Company in relation to the provision of GMDSS services and the rights of the Organization to oversee and ensure the observance by the Company of those obligations.

* may be incorporated into the text of revised Resolution A.888(21)

IT IS THEREFORE AGREED AS FOLLOWS:

1 INTERPRETATION

1.1 Definitions

In this Agreement the following terms shall have the following meanings:

Advisory Committee means the Advisory Committee elected by the Assembly;

Assembly means the Assembly of Parties referred to in the Convention;

Board means the Board of Directors the Company;

Convention means the Convention on the International Mobile Satellite Organization which entered into force on 16 July 1979, as amended from time to time;

Distress and safety communications means ship-to-shore, shore-to-ship and ship-to-ship distress alerts, search and rescue coordinating communications, and maritime safety information and other distress and safety related communications;

Force Majeure means any act, event, condition or other case of a compelling nature which is not reasonably within the control of the Company or the Organization;

General radiocommunications means operational and public correspondence traffic, other than distress, urgency and safety messages, conducted by radio, as defined in IMO MSC/Circ.1038;

GMDSS means the Global Maritime Distress and Safety System as established by the International Maritime Organization;

GMDSS Service means a specific communication service, provided by the Company and recognised by IMO as meeting one or more of the functional requirements of Chapter IV Regulation 4 of the SOLAS Convention;

IMO means the International Maritime Organization;

ITU means the International Telecommunication Union;

~~**International Standards and Regulations** mean the standards and texts as defined in Clause 3;~~

MSC means the Maritime Safety Committee of IMO;

Maritime safety information means navigational and meteorological warnings, meteorological forecasts and other urgent safety related messages broadcast to ships;

Public Service Obligations means the obligations of the Company set out in Clause 2;

Party means a State for which the Convention has entered into force;

Satellites means any or all of the Satellites owned, leased or operated by the Company;

SOLAS Convention means the International Convention for the Safety of Life at Sea, 1974, as amended from time to time;

Space Segment means the Satellites, and the tracking, telemetry, command, control, monitoring and related facilities and equipment required to support the operation of the Satellites.

1.2 **Headings**

Headings are inserted for convenience only and shall not affect the interpretation of this Agreement.

2 **PUBLIC SERVICE OBLIGATION**

2.1 **Provision of GMDSS Services**

2.1.1 Without prejudice to Clause 3, the Company assumes the obligation to ensure the continuity of maritime satellite distress and safety communications services which it provides for the GMDSS in accordance with:

- IMO Resolution A.888(21), as amended from time to time,
- IMO MSC Resolution XXX relating to specific services it is providing for GMDSS (Annex 1); and
- this Agreement.

2.1.2 To this end, the Organization shall issue to the Company a Letter of Compliance (Annex 2).

2.1.3 The Company shall continue to provide services or systems to enable the maritime distress, safety and general **radio**communications services and systems recognised by IMO, to be available to ships at all times.

2.1.4 The Company may only discontinue provision of an approved GMDSS service with the prior written agreement of the Organization. The Organization shall ~~normally~~ require not less than [three] **[five]** years notice of intention to terminate the provision of any recognised GMDSS service.

- 2.2 The Organization shall conduct oversight of the GMDSS services on a continuing basis.

3 INTERNATIONAL STANDARDS AND REGULATIONS

The Company shall observe the relevant mandatory international ~~instruments~~ **standards**, and take into account those ~~regulations~~, recommendations, resolutions and procedures of IMO and ITU which are of a recommendatory nature, insofar as they relate to the provision of GMDSS services.

4 CHARGING POLICY

- 4.1 The Company shall abide by the charging policy established by IMO in Resolution A.707(17), as amended, for distress and safety messages, and shall observe relevant ITU regulations and IMO recommendations and resolutions in existence on the date of this Agreement.
- 4.2 The Organization shall consult with the Company regarding any proposed changes to the charging policy.

5 INFORMATION AND COOPERATION

- 5.1 The Organization shall be entitled to be supplied with all reasonable information pertaining to the Company's ability to provide and provision of GMDSS services, including engineering and related advice, assistance and studies, in such form and with such frequency as is required to enable the Organization to review the performance by the Company of the Public Service Obligations
- 5.2 The Organization shall provide IMO with regular reports, at least once yearly, on the performance by the Company of its obligations under Clause 2.1.
- 5.3 The Organization and the Company hereby undertake to keep confidential, and to ensure that their officers, employees, agents and professional and other advisers keep confidential, any information which the Organization has acquired pursuant to Clause 5.1 and which is designated by the Company as being confidential, or which the Company has acquired pursuant to Clause

10, or otherwise, and shall not disclose to any third party any such information. If the Organization distributes any such confidential information to Parties, it shall obtain the prior consent of the Company and require the Parties to take appropriate measures to safeguard the confidentiality of such information, subject to national laws and regulations.

6 CONSULTATION

- 6.1 The Organization and the Company shall consult and cooperate regularly, or at the request of any of them at any time, with respect to the implementation of this Agreement. For that purpose, a Public Services Committee shall be established jointly by the Organization and the Company composed of the Director of the Organization, a responsible Director of the Company personally nominated by the Chief Executive Officer of the Company and one other non-executive Director of the Company. The Director and the Company shall agree upon written procedures for functioning of the Committee.
- 6.2 The Company shall, through the Organization, consult IMO, as necessary, with respect to the implementation of any amendments or modifications made to the SOLAS Convention relating to the standards, services and systems referred to in Clause 2.1.
- 6.3 The Company shall, through the Organization, consult IMO, as appropriate, with respect to any proposed change by the Company in the specification of standards, services and systems that relates to the Company's provisions of the capabilities specified in Clause 2.1, before the implementation of the proposed change, and shall observe any recommendation or decision of IMO. The consultations shall also relate to any changes that may be needed to the technical and operational requirements of any of those standards, services and systems to ensure that the Company can comply fully with its obligations under Clause 2.1.
- 6.4 Nothing in this Agreement shall prevent the Organization or the Company from also consulting with any other relevant body regarding such changes.
- 6.5 ~~The Company is entitled to attend and make representations to the Assembly and its subsidiary bodies, as appropriate, as an Observer.~~ **Unless otherwise decided by the Assembly or its subsidiary body, the Company shall have the right to attend as an Observer and make representations to the Assembly and its subsidiary body, as appropriate, on issues pertaining to this Agreement.**

7 COMPLIANCE

- 7.1 Notwithstanding the provisions of Clause 6.1, the Organization and the Company agree each to use reasonable efforts to resolve informally and expeditiously any disagreement or dispute about the Company's compliance with its obligations under this Agreement.
- 7.2 If the Organization determines that the Company is or is likely to be in default in complying with any such obligation, and is unable to resolve the matter to its satisfaction through the consultation referred to in Clause 6.1 or through the informal means referred to in Clause 7.1, the Organization shall issue the Company with a Provisional Letter of Non-compliance.
- 7.3 The Provisional Letter of Non-compliance shall, *inter alia*, state the exact nature of the potential non-compliance, what action the Company can take to remedy the matter and the time within which the Organization requires the matter to be resolved. The time allowed for resolution may depend on the nature of the non-compliance and will take into account any discussions which have taken place with the Company on the issue.
- 7.4 The Provisional Letter of Non-compliance is confidential between the Organization and the Company.
- 7.5 After issuing a Provisional Letter of Non-compliance, the Organization may:
- (a) notify the Company, in writing, that it wishes to meet with management representatives of the Company to discuss the potential non-compliance, in which case the Company shall agree to such a meeting, at the mutual convenience of the parties, within a reasonable time under the circumstances, not to exceed two (2) weeks from the date of the notice; or
 - (b) notify the Company, in writing, that it wishes to meet with the Board to discuss the potential non-compliance, in which case the Company shall agree to such a meeting at the mutual convenience of the parties, within a reasonable time under the circumstances, not to exceed four (4) weeks from the date of notice.
- 7.6 If the issue has not been resolved to the satisfaction of the Organization after a period of time appropriate to the nature of the potential non-compliance, the Organization shall issue the Company with a Letter of Non-compliance.
- 7.7 The Letter of Non-compliance shall, *inter alia*, state the exact nature of the non-compliance, what action the Company can take to remedy the matter and the time within which the Organization requires the matter to be resolved. The time allowed for resolution may depend on the nature of the non-compliance and will take into account any discussions which have taken place with the Company on the issue.

- 7.8 The Letter of Non-compliance may include an instruction that the Company **rectifies the acts or omissions which have caused** ~~stops doing whatever it has done to cause~~ the non-compliance to occur.
- 7.9 If the Company does not rectify the non-compliance to the satisfaction of the Organization within the time allowed by the Letter of Non-compliance, the Letter of Non-compliance will be made public and will be sent to the Secretary-General of IMO with a recommendation as to whether IMO recognition of the Company's GMDSS services should be made conditional, suspended or withdrawn.
- 7.10 If the Company takes sufficient action during this process to rectify the non-compliance, the Organization may withdraw the Provisional Letter of Non-compliance or Letter of Non-compliance at any time.

8 ARBITRATION

- 8.1 The Organization and the Company may submit to arbitration any dispute arising out of or in **relation to** ~~connection with~~ the provisions of this Agreement.
- 8.2 **Unless otherwise agreed in writing between the Organization and the Company**, any such dispute shall be finally settled by arbitration under the **Rules of the** United Nations Commission on International Trade Law (UNCITRAL) ~~Rules~~ as in force at the time. The appointing authority shall be the London Court of International Arbitration (LCIA). The number of arbitrators will be one unless otherwise agreed by the Organization and the Company. The place of arbitration shall be London, England, and the language of the arbitration shall be English.
- 8.3 The decision of the Arbitrator shall be binding upon the Organization and the Company.
- 8.4 The Organization and the Company shall immediately implement any decision of the Arbitrator in relation to the provisions of this Agreement.
- 8.5 Any failure by the Company to immediately implement the decisions of the Arbitrator, either in whole or in part, shall constitute a gross breach of this Agreement and shall be immediately referred to the Secretary-General of IMO with a recommendation that recognition of the GMDSS services provided by the Company be withdrawn forthwith.
- 8.6 The Organization and the Company shall each bear their own costs in relation to any arbitration proceedings.

- 8.7 The Organization shall inform the Secretary-General of IMO if any matter related to the provision of GMDSS services is sent to arbitration and of any subsequent decision by the Arbitrator.

9 ENFORCEMENT

Upon the decision of IMO referred to in Clause 7.9 or Clause 8.5, the Letter of Compliance referred to in Clause 2.1.2 will be amended or withdrawn accordingly.

10 COSTS OF THE ORGANIZATION

- 10.1 The Company shall contribute to the costs of the Organization.
- 10.2 The Company shall pay to the Organization annually in pounds sterling, a proportion of the total budget of the Organization. The budget will be agreed and approved ~~annually~~ by the Assembly. The approved budget will be apportioned between all Companies with which the Organization has concluded a Public Services Agreement, in accordance with the formula adopted by the Assembly (Annex 3).
- 10.3 The Organization will conduct ~~informal~~ consultations with the Company when preparing its budget.

11 ASSIGNMENT

Otherwise than in the case of a reconstruction of the Company, or assignment to a subsidiary or to its holding company or to a subsidiary of that holding company, as those expressions are used in the UK Companies Act 1985, as amended from time to time, the Company may not assign any of its rights or obligations under this Agreement in whole or in part without the prior approval in writing of the Organization.

12 WINDING UP

In order to secure the continuity of the GMDSS services provided by the Company, **any decision to voluntarily wind up the Company shall take effect only with the consent in writing of the Organization which shall not be withheld or delayed unless the GMDSS services provided by the Company are jeopardised.** ~~any decision to voluntarily wind up the Company shall take effect only with the consent in writing of the Organization, unless the winding up of the Company is occasioned by virtue of the Company being unable to pay its debts.~~

13 WAIVER

No waiver by the Organization, or the Company or failure to perform any provision of this Agreement shall operate or be construed as a waiver with respect to any other or further failure whether of a like or different character.

14 SEVERANCE

If any provision of this Agreement is finally determined to be, or becomes, invalid, illegal or unenforceable, then such provision shall, so far as invalid or unenforceable, be given no effect and shall be deemed not to be included in this Agreement, but without affecting or invalidating the remaining provisions of this Agreement.

15 FORCE MAJEURE

No delay or failure by the Organization or the Company in performing any of their obligations referred to in this Agreement shall constitute a breach of this Agreement nor give rise to any claim or action against either of them to the extent that such delay or failure is caused by an event of *force majeure*. If either the Organization or the Company is unable to carry out any of such obligations by reason of an event of *force majeure*, it shall promptly advise the other thereof in writing and shall use its best endeavours to resume the performance of its obligations so affected.

16 WARRANTIES AND REPRESENTATIONS

- 16.1 Each party represents and warrants to the others that it has full power and authority to enter into, undertake and perform its obligations set out in this Agreement.
- 16.2 The Organization undertakes that it will be consistent and non-discriminatory in the Terms and Conditions it agrees from time to time with other parties in

relation to general provisions, common principles and appropriate obligations.

17 NOTICES

- 17.1 Any notice or other communication to be given under this Agreement shall be in writing and shall be sent to the party concerned by facsimile transmission as follows:

For the International Mobile Satellite Organization:

To: The Director
International Mobile Satellite Organization
99 City Road
London EC1Y 1AX
United Kingdom

Facsimile number: +44 171 728 1172

For the Company: *[insert name, address and facsimile number]*

- 17.2 Any party to this Agreement may change the address or the name of the person for whose attention notices are to be addressed by serving a notice on the others in accordance with this clause.
- 17.3 Notices served in accordance with Clause 17.1 shall be deemed to have been served two business days after the facsimile was transmitted to the addressee.

18 AMENDMENTS

This Agreement may be amended only by an instrument in writing signed by duly authorized representatives of the Organization and the Company.

19 TERMINATION

This Agreement may be terminated:

- (a) by written agreement between the Organization and the Company;
or
- (b) by written notice given by the Organization to the Company; or

- (c) by written notice of not less than [three] **[five]** years given by the Company to the Organization.

20 RIGHTS OF THIRD PARTIES

A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right of a party to this Agreement to enforce any term of the Agreement for and on behalf of such third party where applicable.

21 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with English law.

22 ENTIRE AGREEMENT

The entire agreement and understanding between the Organization, and the Company with respect to the subject matter hereof, is set out in this Agreement.

AS WITNESS this Agreement has been executed the day and year first before written.

Signed on behalf of:

**THE INTERNATIONAL MOBILE
SATELLITE ORGANIZATION**

Director

Signed on behalf of:

(THE COMPANY)

Chief Executive Officer

SAMPLE

RECOMMENDATION OF IMSO TO THE MSC

The International Mobile Satellite Organization (IMSO):

- in response to the request of the Maritime Safety Committee at its [xxxth] session,
- having reviewed the information provided by [name of Country] to the International Maritime Organization in relation to the maritime mobile satellite services provided by [name of the Company], and other information received, and
- having evaluated all information received,

hereby confirms that the services listed in the annex to this report * comply with the technical and operational requirements for participation in the GMDSS set out in IMO Assembly Resolution A.888(21), as amended, and

recommends that the MSC decide accordingly.

* *the annex to the report shall include, inter alia:*

1. *the full identity of the Company concerned; and*
2. *a table of the nine functional requirements given in SOLAS Chapter IV, regulation 4, and the names of the specific communication services provided by the Company which are accepted as meeting each of those requirements.*

D R A F T

Annex 1

IMO MSC Resolution xxxx

**Recognition of maritime mobile-satellite services provided by [the Company]
in the Global Maritime Distress and Safety System (GMDSS)**

The text of this resolution should, inter alia:

- *refer to the application received from the Government on behalf of the Company.*
- *identify the Company.*
- *identify which of the Company's services are recognised as meeting the requirements of each of the functional requirements listed in SOLAS Chapter IV regulation 4.*
- *contain a decision that IMO recognises the services listed for participation in the GMDSS, in accordance with the recommendation of IMSO *.*
- *state that the decision of IMO is subject to IMSO oversight of the Company's services in accordance with the Rules and Arrangements set out in the Public Services Agreement (PSA) concluded between IMSO and the Company (Clause 2.4 of Resolution A.888(21), as amended, refers).*

* *the annex to the Resolution shall include, inter alia, a table of the nine functional requirements given in SOLAS Chapter IV, regulation 4, and the names of the specific communication services provided by the Company which are accepted as meeting each of those requirements.*

Note: final text shall be decided by IMO

D R A F T

Annex 2

LETTER OF COMPLIANCE

with the requirements of IMO Resolution A.888(21), as amended

relating to the Maritime Mobile Satellite Services provided for the GMDSSS by

[the Company]

1. Reference to:

- the application of the Government of [xxx] to IMO.
- [the request of IMO MSC to IMSO for evaluation and recommendation relating to the Company.]
- [Report of IMSO to the IMO MSC (Evaluation and Recommendation)]
- Decision of IMO MSC (MSC Resolution xxx).

2. Certification (confirmation) that the Company complies with all IMO technical and operational requirements for participation in the GMDSS set out in IMO Assembly Resolution A.888(21), as amended.

3. Statement that, in the light of the above, the Company has been issued with the Letter of Compliance, in accordance with Clause 2.1.2 of the Public Services Agreement (PSA).

4. Statement that the scope and validity of the Letter of Compliance is subject to Clause 9 of the PSA.

Note: final text to be included after consultation with IMO

D R A F T

Annex 3

IMSO ASSEMBLY RESOLUTION xxx

adopted on [date]

BUDGETARY APPROVAL PROCEDURES AND APPORTIONMENT OF COSTS

The text of this resolution shall, inter alia:

1. *Incorporate the existing procedures for approving the Annual Budget of the Organization, modified as may be necessary to take account of the text of the amended Convention (when so amended)*
2. *Include statements concerning the Organization's policies on separation of the costs of GMDSS oversight from the costs of any other approved functions that may be undertaken by the Organization or Directorate, the avoidance of cross-subsidisation between programmes, and apportionment of Headquarters and staff costs between programmes.*
3. *Set out clearly the principles and method adopted by the Assembly for apportioning costs between multiple providers of GMDSS services.*

to be inserted when approved by the Assembly